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TRANS

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

04760

FILE: B-188091 -

DATE: January 6, 1978

MATTER OF: Trans Country Van Lines, Inc.

DIGEST:

Carrier's section 22 tender covering office furniture, files, fixtures and equipment applies to the shipment of dental equipment.

This decision is in response to a letter of August 10, 1977, from Trans Country Van Lines, Inc. (Trans Country), requesting reconsideration of our decision of July 11, 1977, B-188091, in which we sustained the General Services Administration's (GSA) disallowance of Trans Country's claim for \$669.01.

GSA's action was taken on a shipment of dental equipment weighing 22,280 pounds which was transported in November 1971, from Fort Knox, Kentucky, to Forest Park, Georgia, under Government bill of lading (GBL) No. F-9088595. Trans Country billed and was paid \$742.35 for transporting the shipment. Its charges were based on the carrier's Section 22 Quotation I.C.C. 150 (Tender 150).

On March 6, 1974, Trans Country issued its supplemental bill or claim No. 1498 for additional transportation charges of \$669.01. This additional amount was based on charges derived from the household goods rates listed in Government Rate Tender I.C.C. 1-V (Tender 1-V). Trans Country asserted that the shipment of dental equipment fell within the specific provisions of Tender 1-V, Item 10, subsection 2, which expressly applies to "hospital equipment." GSA believed that the dental equipment was properly classified as "office furniture and equipment" which is covered by Trans Country's Tender 150. We agreed and on that basis sustained GSA's disallowance of Trans Country's claim for the additional transportation charges.

The commodity description in Tender 150 reads in part: "OFFICE FURNITURE, FILES, FIXTURES AND EQUIPMENT . . ." Trans Country argues that Tender 150 does not apply to the commodities shipped under GBL No. F-9088595 for two reasons: first, the commodities which were shipped were hospital equipment, not office furniture or equipment; and second, as framers of the tender its intention should be a controlling factor, and Trans Country did not intend Tender 150 to apply to either hospital or dental equipment.

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In regard to Trans Country's first argument, GBL No. F-9088595 lists the commodities shipped as miscellaneous dental equipment, including dental cabinets, dental machines (dental operating units), dental operating lights and dental chairs. In Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 (1952), the Interstate Commerce Commission (ICC) characterizes dental chairs as office furniture, and the ICC's interpretation of motor carrier certificates are binding unless arbitrary or clearly erroneous. Beaney v. United States, 271 F. Supp. 692 (W.D. N.Y. 1967). In line with the reasoning in this case, dental cabinets must also be considered as office furniture. We have been informally advised by an ICC official that dental machines and operating lights are included within the definition of office equipment.

Trans Country contends that the commodities shipped are all hospital equipment, apparently relying on the fact that in the bill of lading it is noted that some of the commodities were later to be shipped to Government hospitals. There is no evidence, however, that the final destination of the commodities were hospitals. Furthermore, the majority of the commodities transported were listed on the bill of lading as being later sent to army bases, not hospitals.

We must therefore conclude that the commodities shipped under GBL No. F-9088595 were dental office furniture and equipment.

Trans Country's second argument that it was its intention to exclude dental and hospital equipment from Tender 150, must also fail. In interpreting a tariff or tender, its terms must be taken in the sense in which they are generally used and accepted. See Penn Central v. General Mills, 439 F.2d 1338, 1340-41 (8th Cir. 1971). As Trans Country did not limit the word "office" by adding specific modifying adjectives, we must assume that it was meant to take on its general meaning. See Restatement (Second) of Contracts, Sec. 229 (e) (1973); L. Simpson, Contracts 209 (2d ed. 1965). As discussed in our prior decision, the general meaning of the term "office" includes the place in which a professional man (as a dentist) conducts his professional business. See Webster's Third New International Dictionary, 1567 (1966).

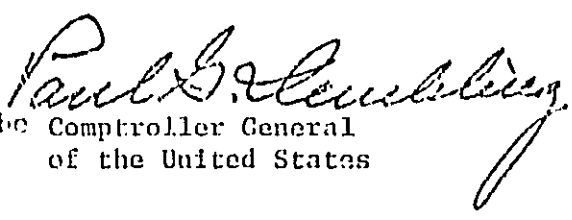
Even if the Tender 150 commodity description can be considered ambiguous when applied to the shipment transported under GBL No. F-9088595, it long has been the rule that

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ambiguities in tariffs or in Section 22 quotations like Tender 150 are to be resolved against the carrier and in favor of the shipper. Penn Central Co. v. General Mills, Inc., supra; C & H Transportation Co. v. United States, 436 F.2d 480, 482 (Ct. Cl. 1970); United States v. Great Northern Ry., 337 F.2d 243, 246 (8th Cir. 1964). See B-187317, January 27, 1977.

Tender 1-V applies only in the absence of an applicable individual tender filed by the carrier. B-186928, March 28, 1977. We must conclude then that Trans Country's individual Tender 150 applies to the shipment of the commodities described on GBI No. F-9088595. Tender 150 is therefore the applicable basis for the computation of the transportation charges.

Our decision of July 11, 1977, B-188091, sustaining GSA's disallowance of Trans Country's claim for \$669.01, is affirmed.


For the Comptroller General
of the United States